IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 298 of 1999

with

SPECIAL CRIMINAL APPLICATION No 321 of 1999

with

SPECIAL CRIMINAL APPLICATION No 323 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

ANAGRAM FINANCE LTD A COMP INCORPORATED

Versus

STATE OF GUJARAT

---

Appearance:

Special Criminal Appln. No.298 of 1999

MR TV SHAH for petitioner
MR AJ DESAI, APP for respondent Nos.1 and 2
MR CH VORA for respondent No.3

Special Criminal Appln. No.321 of 1999

MR TV SHAH for petitioner

MR KG SHETH, APP for respondent Nos.1 and 2
MR YS LAKHANI for respondent Nos.3 & 4

Special Criminal Appln. No.323 of 1999

MR TV SHAH for petitioner
MR PG DESAI FOR respondent Nos.1 and 2
MR YS LAKHANI for respondent Nos.3 & 4

---

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 07/07/2000

COMMON C.A.V. JUDGEMENT

All these Special Criminal Applications have been filed by the petitioner, a company registered under the Companies Act, 1956 and engaged in the business of leasing and hire purchase, having its registered office at 901, Sakar-I, Opp. Nehru Bridge, Ashram Road, Ahmedabad-380 009 and one of its branches situated at Kutch, Bhuj wherein one Hitendra Anandrai Thakar was serving as Assistant in the said branch at the relevant time.

2. The respondent No.3 of Special Criminal Application No.298 of 1999, the respondent Nos.3 and 4 of Special Criminal Application No.321 of 1999 and respondent Nos.3 and 4 of Special Criminal Application No.323 of 1999 have purchased car on hire purchase basis from the petitioner Company and for that, agreements have been executed by and between the parties and a note to that effect was also made in the RTO book.

3. An authorised person of the petitioner company had filed one complaint against Hitendra A. Thakar who was serving with the company at Bhuj at that time before the Bhuj City Police Station which has been registered as Bhuj Police Station C.R.. No.172 of 1998 under Secs.467, 468, 470, 471 and 120 of Indian Penal Code and police started investigation. During the course of investigation, Investigating Officer has seized the vehicle bearing registration Nos.GJ 12 K 8402, GJ 12 D 9698, GJ 12 D 9961 and GJ 12D 9571 respectively belonging to the respective respondents as muddamal. Therefore, persons from whose custody motor vehicle have been seized as muddamal have filed the application before the Court of learned Chief Judicial Magistrate, Kutch at Bhuj under Sec.451 of Code of Criminal Procedure praying for custody

of the vehicles in question.

4. Learned chief Judicial Magistrate having heard the learned advocates appearing for the respective parties, passed a common order on 6-2-1999 handing over interim custody of vehicles in question to the applicants of Exs.12, 38, 40, 42 and 45 respectively with certain conditions. Against that order, present petitioner preferred Criminal Revision Application No.11 of 1999 in the Court of learned Sessions Judge, Kutch at Bhuj and same has been decided on merits by learned Judge vide order dated 8-3-1999 confirming the order passed by the learned Chief Judicial Magistrate. Being aggrieved and dissatisfied with the above concurrent orders, present Special Criminal Applications have been filed by the petitioner.

5. I have heard Mr. T.V.Shah, learned advocate for the petitioner of all these petitions, Mr.A.J.Desai, learned APP for respondent Nos.1 and 2 of Special Criminal Application No.298 of 1999, Mr.C.H.Vora, learned advocate for the respondent No.3 of Special Criminal Application No.298 of 1999, Mr.Y.S.Lakhani, learned advocate for the respondent Nos.3 and 4 of Special Criminal Application Nos.321/99 and 323/99, Mr.K.G.Sheth, learned APP for the respondent Nos.1 and 2 of Special Criminal Application No.321 of 1999 and Mr.P.G.Desai, learned P.P. for respondent Nos.1 and 2 of Special Criminal Application No.323 of 1999. I have also gone through the concurrent reasoned orders passed by two Courts as also the documentary evidence annexed with the petitions and shown to me by the learned advocates for the respective parties.

6. Pointing out the difference between Secs.451 and 457 of Cr.P.C., learned advocate for the petitioner has stated that, to the best of his knowledge and information, muddamal vehicles have not been handed over by the Investigating Officer to the Court. But it is seen that it is the petitioner which has claimed the muddamal as a petitioner by way of filing separate applications before the Court below under Sec.451 of Cr.P.C. along with the present respondents. On the one hand, petitioner is demanding the custody of the vehicles under Sec.451 of Cr.P.C. and on the other hand, it is raising this contention when they fail. Therefore, it is estopped from raising the above contention.

7. Facts remain that Courts below have passed the orders under Sec.451 of Code of Criminal Procedure handing over interim custody of the vehicles in question

to the persons from whose custody vehicles have been seized by the Investigating Officer as muddamal. It appears that criminal complaint has been filed by the petitioner-company against its own employee. It was averred in the said complaint that the accused, who was an employee of the petitioner-company, has misappropriated huge amounts which have been paid by respective respondents and others by way of instalments. According to petitioner, the alleged misappropriated amount is running into lakhs. It is the case of the respective respondents from the very beginning that they have paid the amount to the company and since the accused was authorised to collect the instalment amount, they have paid the above amount to him and No Objection Certificate was issued by the company after recovering the amount. In view thereof, the respondent No.2 has removed the note (endorsement) from the R.T.O. book and hence, the respective respondents have become the absolute owners of the vehicles in question. Therefore, they have got the right to transfer the same to anybody. It is the further case of the respective respondents that they have purchased the vehicles and, therefore, they are bona fide purchasers and vehicles have been seized from them as muddamal and as they are bona fide purchasers as per the settled law, vehicles should be given to them by way of interim custody subject to result of the final disposal of the case.

8. In my opinion, aforesaid questions are to be dealt with at the time of trial and not at this stage as it will prejudice the interest of the parties at the time of trial.

9. The petitioner has come out with the specific averment in the criminal complaint that the respective respondents have not paid the instalments. Respective respondents have also come out with the case that since they have paid due amount, vehicles have been transferred after obtaining No Objection Certificate from the petitioner-company. Whether the employee was authorised to issue the No Objection Certificate or not is a question of evidence or trial and in absence of that, Court cannot decide the rights of the parties at this stage. If it would have been a simple case of purchasing the vehicle on hire purchase basis and transferring the vehicle without paying the instalment amount, then result would have been different. Here in this case, facts are of peculiar nature and, therefore, the judgments relied upon by the learned advocate for the petitioner namely, 1993 Cri. L.J. 2484 and 1993 Cri.L.J. 1069 would not be of no help to the petitioner of these petitions. Both

the Courts below have taken into consideration all the above aspects of the matters while granting interim custody of the vehicles with conditions and interest of the petitioner was also protected while passing said order. Learned advocate for the petitioner is not in a position to show any illegality in the two concurrent orders passed by the Courts below.

10. In view of the above facts and circumstances of the case, all the Special Criminal Applications are rejected. Notice issued in Special Criminal Application No.298 of 1999 is discharged. Similarly, Rule issued in Special Criminal Application Nos.321 of 1999 and 323 of 1999 is discharged. Interim relief granted earlier is also vacated.

(R.P.DHOLAKIA,J.)
radhan/